

**LEGISLATIVE SERVICES AGENCY  
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**FISCAL IMPACT STATEMENT**

**LS 7278**

**BILL NUMBER:** HB 1441

**NOTE PREPARED:** Jan 13, 2004

**BILL AMENDED:**

**SUBJECT:** Cemetery Maintenance.

**FIRST AUTHOR:** Rep. Saunders

**FIRST SPONSOR:**

**BILL STATUS:** As Introduced

**FUNDS AFFECTED:**     **GENERAL**  
                          **X DEDICATED**  
                          **FEDERAL**

**IMPACT:** State & Local

**Summary of Legislation:** This bill provides that if a fee is charged for a death certificate, an additional \$3 fee is imposed to be used by a county cemetery commission (commission) for maintenance of certain cemeteries. It requires a utility to have an approved development plan before disturbing ground within 100 feet of a burial ground. It allows a commission to maintain certain cemeteries established before 1900. The bill changes appointment requirements for commission members. It allows a commission to use certain tax revenue for township cemeteries. It requires a commission to file an annual report with the Division of Historic Preservation and Archeology. It also requires township trustees to make an annual report to the commission. The bill allows the commission to accept donations and maintain pauper burial records. It adds commission duties. It also provides that a private property owner who allows a person on the owner's land to access a cemetery is not liable, except for certain actions, for injuries to a person.

**Effective Date:** July 1, 2004.

**Explanation of State Expenditures:** *Historic Cemetery Maintenance*- Because state money is to be used on cemeteries that qualify as historic structures, according to state statute, the Department of Historic Preservation and Archeology Review Board (Board) will be required to review the cemeteries before maintenance or other work could be performed. If a cemetery is listed on the State or National Register, is in a historic district, or is a state-owned property, the Board would be required to work further with the county cemetery commission to ensure preservation standards are met.

The Division of Historic Preservation and Archeology (Division) estimates that approximately 40 cemeteries are listed on the State or National Register, which would require additional review by the Board. It is unknown how many other cemeteries would need to be initially reviewed. According to the Division, the additional research and review processes would increase its workload.

*Development Plan* - The Division currently reviews development plans people submit to request permission to disturb the ground that lies within 100 feet of a burial ground. The plans are reviewed by the state archaeologist, which generally take from a few hours to few days to complete. The quality of information provided in the plan determines the length of time it takes to decide on an approval. The state archaeologist estimates the Division has received approximately 30 development plans for review since the law was enacted in 2000. Currently, public and municipally owned utilities are exempt from this requirement.

This provision requires certain public utilities and municipally owned utilities to submit a development plan, for the same purpose, to the Indiana Utility Regulatory Commission (IURC). The fiscal impact of this provision depends on IURC's availability of qualified staff to review the development plans. Additional expenditures may be required if additional staff is needed to implement this provision. Nearly 400 utilities would fall under this bill.

A person who violates this requirement commits a Class A misdemeanor. The offense may be made a Class D felony if buried human remains are disturbed in the act. By making public and municipal utilities subject to this section of the code, the possible number of entities who may violate the section of code is increased.

*Commissions' Annual Reports* - Currently, county cemetery commissions file their annual reports with the Indiana Historical Bureau. This provision replaces the Bureau with the Division. Although this may increase the Division's workload, it should equally decrease the Bureau's workload.

*Penalty Provision:* A Class D felony is punishable by a prison term ranging from six months to three years or reduction to Class A misdemeanor depending upon mitigating and aggravating circumstances. Assuming offenders can be housed in existing facilities with no additional staff, the average cost for medical care, food, and clothing is approximately \$1,825 annually, or \$5 daily, per prisoner. However, any additional expenditures are likely to be small. The average length of stay in Department of Correction (DOC) facilities for all Class D felony offenders is approximately ten months.

*Background on IURC and Office of the Utility Consumer Counselor (OUCC) Funding:* The operating budgets of the IURC and OUCC are funded by regulated utilities operating in Indiana. The IURC determines the rate at which to bill the utilities based on the two agencies' budgets, less reversions, divided by the total amount of gross intra-state operating revenue received by the regulated utilities for the previous fiscal year. Based on this formula, utilities are currently billed approximately 0.10% of their gross intra-state operating revenues to fund the IURC and OUCC. In FY 2003, fees from the utilities and fines generated approximately \$10.9M.

**Explanation of State Revenues:** *Pioneer Cemetery Account* - This bill creates a Pioneer Cemetery Account (Account) under the Cemetery and Burial Ground Trust Fund within the Division. Money generated from fees established by this bill is to be deposited in the Account for distribution at the local level. Money in the Account is annually appropriated to the Division and does not revert to the General Fund at the end of the fiscal year.

*Penalty Provision:* If additional court cases occur and fines are collected, revenue to both the Common School Fund (from fines) and the state General Fund (from court fees) would increase. The maximum fine for a Class A misdemeanor is \$5,000, and the maximum fine for a Class D felony is \$10,000. However, any additional revenue would likely be small.

**Explanation of Local Expenditures:** *Commissions' Duties* - This provision allows county cemetery commissions to accept donations of real property that contain certain cemeteries. Some cemetery land is assessed at a \$1/acre under cemetery classification law. If non-classified cemetery land is donated as well,

then the assessed value of this land would be lost.

The commissions would be required to assist townships with restoration and maintenance of certain cemeteries and educate local officials and residents concerning legal requirements of certain cemeteries.

*Background* - Eighteen counties have cemetery commissions with budgets ranging from \$0 to \$50,000 but averaging between \$5,000-\$10,000. The fiscal impact of this bill is indeterminable because it is not known how many additional cemeteries could be affected by this bill.

*Penalty Provision:* A Class A misdemeanor is punishable by up to one year in jail. If more defendants are detained in county jails prior to their court hearings, local expenditures for jail operations may increase. However, any additional expenditures would likely be small.

**Explanation of Local Revenues:** *Death Certificate Fees* - The bill also establishes two new fees from which revenue will be deposited into the Account for distribution to county cemetery commissions.

The first fee of \$3 is to be added to the rate of a death certificate when a local health department charges a fee for issuing a death certificate. This fee is to be collected in the same manner as the \$1 fee for coroners continuing education. Since the Coroners Training Board averaged \$342,000 revenue from the fee over the past five years, it can be estimated that the new \$3 fee could generate between \$914,000 and \$1.1M per year.

The second fee of \$3 is to be collected each time the Division of Vital Records of the State Department of Health issues a death certificate. The Department of Health estimates that an average of 7,000 death certificates are issued each year, which would cause the fee to generate, on average, \$21,000 per year.

County cemetery commissions may use the money to maintain and repair certain cemeteries, purchase land that contains certain cemeteries, and replace and repair tombstones and grave markers in certain cemeteries.

*Township Cemeteries* - This provision allows townships that maintain certain cemeteries to request an annual tax levy for cemetery maintenance purposes. The levy may not exceed \$0.50 per \$100 of assessed value. The fiscal impact of this provision is dependent on local action.

*Penalty Provision:* If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from court fees. However, any change in revenue would likely be small.

**State Agencies Affected:** Division of Historic Preservation and Archeology, Department of Natural Resources; Vital Records, State Department of Health; Indiana Historical Bureau; Indiana Utility Regulatory Commission; and Department of Correction.

**Local Agencies Affected:** County cemetery commissions; local health departments; trial courts, local law enforcement agencies.

**Information Sources:** Jeannie Regan-Dinius, Division of Historic Preservation and Archeology, Department of Natural Resources, 317-234-1268; Rick Jones, State Archaeologist, Division of Historic Preservation and Archeology, Department of Natural Resources, (317) 233-0953; Zach Cattell, State Department of Health, 317-233-2170; Lisa Barker, Indiana State Coroners Training Board, 887-692-7284.

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